

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDUARDO CHAVEZ MENDOZA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:23-cv-00350-EPG

FINAL JUDGMENT AND ORDER
REGARDING PLAINTIFF'S SOCIAL
SECURITY COMPLAINT

(ECF Nos. 1, 13).

This matter is before the Court on Plaintiff's complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration regarding his application for supplemental security income benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Ninth Circuit. (ECF No. 9).

Plaintiff argues as follows:

1. The ALJ's RFC determination is unsupported by substantial evidence as he failed to properly evaluate the medical opinions of record in accordance with the prevailing rules and regulations.
2. The ALJ's Step 5 determination is unsupported by substantial evidence as there are clear discrepancies between the job descriptions and the limitations set forth in the RFC.
3. The ALJ failed to include work-related limitations in the RFC consistent with the nature and intensity of Plaintiff's limitations and failed to offer any reason for

1 rejecting Plaintiff's subjective complaints.
 2 (ECF No. 13, p. 2).

3 Having reviewed the record, administrative transcript, parties' briefs, and the applicable
 4 law, the Court finds as follows.

5 **I. ANALYSIS**

6 **A. Medical Opinions**

7 The Court first turns to Plaintiff's argument that the RFC is not supported by substantial
 8 evidence because the ALJ erred in considering the opinion of the psychiatric consultative
 9 examiner, Dr. DeBattista. Plaintiff challenges the following RFC assessed by the ALJ:

10 After careful consideration of the entire record, the undersigned finds that the
 11 claimant has the residual functional capacity to perform a full range of work at all
 12 exertional levels but with the following nonexertional limitations: he is able to
 13 perform simple, routine, and repetitive tasks but not at a production rate or pace
 14 (e.g. assembly line work); he is able to perform simple work-related decisions; he
 15 is able to tolerate few changes in a routine work setting defined as performing the
 16 same duties at the same station or location day-to-day; he can have occasional
 17 interaction with supervisors; he can have occasional contact with coworkers with
 18 no tandem tasks or team type activities; and he can have no contact with the
 19 public.

20 (AR 19).

21 Because Plaintiff applied for benefits in 2019, certain regulations concerning how ALJs
 22 must evaluate medical opinions for claims filed on or after March 27, 2017, govern this case. 20
 23 C.F.R. §§ 404.1520c, 416.920c. (AR 21). These regulations set "supportability" and
 24 "consistency" as "the most important factors" when determining an opinion's persuasiveness. 20
 25 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2). And although the regulations eliminate the "physician
 26 hierarchy," deference to specific medical opinions, and assignment of specific "weight" to a
 27 medical opinion, the ALJ must still "articulate how [he or she] considered the medical opinions"
 28 and "how persuasive [he or she] find[s] all of the medical opinions." 20 C.F.R. §§ 404.1520c(a)-
 (b); 416.920c(a)-(b).

As for the case authority preceding the new regulations that required an ALJ to provide
 clear and convincing or specific and legitimate reasons for rejecting certain medical opinions, the
 Ninth Circuit has concluded that it does not apply to claims governed by the new regulations:

The revised social security regulations are clearly irreconcilable with our caselaw

1 according special deference to the opinions of treating and examining physicians
 2 on account of their relationship with the claimant. *See* 20 C.F.R. § 404.1520c(a)
 3 (“We will not defer or give any specific evidentiary weight, including controlling
 4 weight, to any medical opinion(s) . . . , including those from your medical
 5 sources.”). Our requirement that ALJs provide “specific and legitimate reasons”
 6 for rejecting a treating or examining doctor’s opinion, which stems from the
 7 special weight given to such opinions, *see Murray*, 722 F.2d at 501–02, is likewise
 8 incompatible with the revised regulations. Insisting that ALJs provide a more
 9 robust explanation when discrediting evidence from certain sources necessarily
 10 favors the evidence from those sources—contrary to the revised regulations.

11 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Accordingly, under the new regulations,
 12 “the decision to discredit any medical opinion, must simply be supported by substantial
 13 evidence.” *Id.* at 787.

14 In conjunction with this requirement, “[t]he agency must ‘articulate . . . how persuasive’
 15 it finds ‘all of the medical opinions’ from each doctor or other source, 20 C.F.R. § 404.1520c(b),
 16 and ‘explain how [it] considered the supportability and consistency factors’ in reaching these
 17 findings, *id.* § 404.1520c(b)(2).” *Woods*, 32 F.4th at 792.

18 Supportability means the extent to which a medical source supports the medical
 19 opinion by explaining the “relevant . . . objective medical evidence. *Id.*
 20 § 404.1520c(c)(1). Consistency means the extent to which a medical opinion is
 21 “consistent . . . with the evidence from other medical sources and nonmedical
 22 sources in the claim. *Id.* § 404.1520c(c)(2).

23 *Id.* at 791-92.

24 Here, the ALJ discussed the opinion of Dr. DeBattista as follows:

25 Dr. DeBattista opined that the claimant can complete one or two step instructions,
 26 is unable to complete complex and detailed instructions, has moderate to marked
 27 issues interacting with coworkers and the public, and moderate to marked issue
 28 with concentration. Also, the claimant has a moderate issue with attendance, and a
 moderate to marked issue with supervisors (Exhibit B5F/4). The undersigned finds
 this opinion not persuasive. This is internally inconsistent with the findings from
 the consultative examination. The claimant had good eye contact, no evidence of
 hallucinations, intact judgment, intact insight, and normal orientation. Also, as
 noted in his function reports, the claimant can drive a car, handle his finances, and
 make his own meals, which requires a modest level of concentration (Exhibits B6E
 & B10E).

(AR 22).

Plaintiff argues that the ALJ’s first reason for finding Dr. DeBattista’s opinion to be not
 persuasive, i.e., that the opinion was internally inconsistent with Dr. DeBattista’s own

1 examination findings, is legally insufficient because the ALJ “never properly discussed” the
2 examination findings, which “actually demonstrated Plaintiff had an abnormal mood; an
3 abnormal affect; could only recall one out of three objects after five minutes; made four errors on
4 the first seven serial three’s; and was unable to interpret a proverb.” (ECF No. 13, p. 8) (citing
5 AR 476). However, elsewhere in the ALJ’s decision, the ALJ discussed Dr. DeBattista’s
6 examination of Plaintiff, specifically noting the examination findings as to Plaintiff’s “depressed
7 and anxious mood,” “constricted affect,” and “errors in his concentration and calculation test.”
8 (AR 20) (citing AR 476). Thus, the ALJ did not mischaracterize Dr. DeBattista’s examination
9 findings or ignore medical evidence from Dr. DeBattista that was favorable to Plaintiff. *Holohan*
10 *v. Massanari*, 246 F.3d 1195, 1207 (9th Cir. 2001) (an ALJ cannot “selectively” rely on evidence
11 to find a claimant not disabled, while “ignor[ing]” evidence favorable to the claimant). While
12 Plaintiff argues the examination findings support a different conclusion, this at most amounts to
13 another “rational interpretation,” meaning that “the decision of the ALJ must be upheld.” *Orteza*
14 *v. Shalala*, 50 F.3d 748, 749 (9th Cir. 1995).

15 Plaintiff also argues that the ALJ did not address how Dr. DeBattista’s opinion was
16 consistent with the opinion of the state agency psychological consultant as “all providers opined
17 Plaintiff [should be limited] to simple one to two step instructions.” (ECF No. 13, p. 9). However,
18 the ALJ found the Disability Determination Service (DDS) evaluation of Plaintiff to be only
19 partially persuasive:

20 [T]he Disability Determination Service (DDS) conducted an initial evaluation of
21 the claimant. They opined that the claimant has severe mental health impairments.
22 In addition, they found that the claimant has moderate limitations in all four
23 domains of the “paragraph B” criteria. They opined that the claimant has moderate
24 limitation with detailed instructions, working around others, completing a normal
25 workweek, interacting with the public, interacting with coworkers, responding to
26 changes in the workplace, setting realistic goals, and being aware of normal
27 hazards (Exhibit B2A). On reconsideration, DDS added that the claimant was
28 capable of completing one to two step tasks (only), can maintain concentration,
persistence, and pace, can adapt, and relate to others (Exhibit B4A). The
undersigned finds [this] opinion partially persuasive. As noted above, the claimant
has nightmares and panic attacks. The claimant has endorsed hallucinations. The
claimant also has had depressed and anxious mood with constricted affect. In
addition, the claimant has endorsed improvement taking his medication with no
side effects. Additionally, the claimant reported that he uses marijuana daily (*See*
exhibits B1F, B3F, B5F, B7F, B10F, and B12F, *supra*). These findings in the

objective medical evidence generally support most of the DDS opinion that the claimant has moderate limitations. However, on reconsideration, DDS added that the claimant is limited to one to two step tasks. This is a vague, non- vocationally relevant term as it does not explain the difference between one to two step instructions as compared to the more precise limitation of "simple instructions." Also, DDS stated that the claimant can adapt, maintain concentration, and relate to others. This seems to be internally consistent with their opinion that the claimant has moderate limitations in detailed instructions, paying attention, interacting with others, and adjusting to changes in the workplace. Therefore, the overall DDS opinion is partially persuasive as it is mostly (not completely) supported by the objective medical evidence.

(AR 21-22).

The ALJ endorsed and found persuasive the DDS opinions that Plaintiff had moderate limitations in all four "paragraph B" criteria: 1) understanding, remembering, or applying information; 2) interacting with others; 3) concentrating, persisting or maintaining pace; and 4) adapting or managing oneself. (AR 18-19). However, the ALJ specifically did not endorse the second DDS opinion that Plaintiff be limited to "one to two step tasks."¹ In discussing the DDS opinions, the ALJ identified two ways in which the limitation to "one to two step tasks" was internally inconsistent.² First, the DDS consultant did not account for the difference between the limitation to one to two step instructions and the DDS consultant's other findings that Plaintiff is "[n]ot significantly limited" in "[t]he ability to understand and remember very short and simple instructions" and "[t]he ability to carry out very short and simple instructions." (*Compare* AR 100

¹ The Court notes that Plaintiff does not argue that the ALJ erred in considering the DDS opinions or advance any argument that the ALJ's reasons for partially discounting the DDS opinions were insufficient. Plaintiff merely argues that the ALJ failed to discuss how the opinions were consistent with one another with respect to the limitation to one to two step instructions. (*See* ECF No. 13, p. 9).

² The ALJ also stated the one to two step instruction was "a vague, non-vocationally relevant term because it does not explain the difference between one to two step instructions as compared to the more precise limitation of 'simple instructions.'" The Court notes that a limitation to one to step instructions is *not* a vague term that is irrelevant to vocational findings. The Court disagrees with this statement, as a limitation to one to step instructions is *not* a vague term that is irrelevant to vocational findings. *See Sally C. v. Comm'r, Soc. Sec. Admin.*, No. 6:19-cv-1262-MO, 2023 WL 6891386, at *3 (D. Ore. Oct. 19, 2023) ("There is nothing vague, however, about a medical opinion that limits a claimant to one-and two-step tasks; this is common parlance of state medical examiners that fill out disability determination explanations for social security claimants."). However, as discussed above, the relevant DDS opinion also stated that Plaintiff was not significantly limited as to "simple instructions." The ALJ correctly identified that the DDS opinion failed to explain this inconsistency.

1 (“[claimant] is capable of understanding, remembering, and carrying out simple 1-2 step task”
2 with AR 96-97 (rating Plaintiff’s understanding and memory limitations) and AR 97 (rating
3 Plaintiff’s concentration and persistence limitations)). Second, the ALJ noted the limitation to
4 one-to-step instructions was not consistent with the DDS consultant’s findings that Plaintiff is
5 “[n]ot significantly limited” in his “ability to maintain attention and concentration for extended
6 periods” and only “[m]oderately limited” in his “ability to understand and remember detailed
7 instructions” and “carry out detailed instructions.” (AR 97). The ALJ’s reasoning as to the
8 inconsistency of the DDS opinion is legally sufficient. *See Ford v. Saul*, 950 F.3d 1141, 1155 (9th
9 Cir. 2020) (“An ALJ is not required to take medical opinions at face value, but may take into
10 account the quality of the explanation when determining how much weight to give
11 a medical opinion.”). Similarly, the ALJ did not endorse Dr. DeBattista’s opinion that Plaintiff
12 can only “complete one or two step instructions” and “is unable to complete complex and detailed
13 instructions” because it was internally inconsistent and not supported by third-party reports of
14 Plaintiff’s activities. Although Dr. DeBattista’s opinion and the second DDS opinion are
15 consistent to one another on this one point, the ALJ provided valid reasons for the weight given to
16 them due to their internal inconsistencies.

17 Further, the ALJ also noted that Dr. DeBattista’s opinion was at odds with the third-party
18 function reports of Plaintiff’s sister in 2020 and 2021, which noted that Plaintiff performed
19 activities requiring concentration such as driving, handling his own finances, and preparing his
20 own meals. (AR 22) (citing AR 280-290, 302-312). This reasoning evokes the supportability
21 factor. While Plaintiff contends the ALJ errs by relying on infrequent and isolated instances of
22 improvement, (ECF No. 13, p. 8), Plaintiff does not otherwise challenge the ALJ’s consideration
23 of the third-party function reports or argue that the ALJ may not consider the reports. Indeed,
24 “testimony from lay witnesses who see the claimant every day is of particular value,” *Smolen v.*
25 *Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996), and constitutes “competent evidence that an ALJ
26 must take into account, unless he or she expressly determines to disregard such testimony[.]”
27 *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). *See also Ghanim v. Colvin*, 763 F.3d 1154,
28 1162 (9th Cir. 2014) (noting that a conflict between daily activities and medical opinion may
justify discounting medical opinion).

1 Accordingly, the Court finds that the ALJ provided legally sufficient reasons to discount
2 the opinion of Dr. DeBattista.

3 **B. Subjective Symptom Testimony**

4 Plaintiff argues the ALJ erred by merely summarizing the treatment records that detailed
5 Plaintiff's reported symptoms and only mentioning Plaintiff's testimony when addressing the
6 "paragraph B" criteria. (ECF No. 13, p. 12).

7 As to a plaintiff's subjective complaints, the Ninth Circuit has concluded as follows:

8 Once the claimant produces medical evidence of an underlying impairment, the
9 Commissioner may not discredit the claimant's testimony as to subjective
10 symptoms merely because they are unsupported by objective evidence. *Bunnell v.*
11 *Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc); *see also Cotton v. Bowen*,
12 799 F.2d 1403, 1407 (9th Cir. 1986) ("it is improper as a matter of law to discredit
13 excess pain testimony solely on the ground that it is not fully corroborated by
14 objective medical findings"). Unless there is affirmative evidence showing that the
15 claimant is malingering, the Commissioner's reasons for rejecting the claimant's
16 testimony must be "clear and convincing." *Swenson v. Sullivan*, 876 F.2d 683, 687
17 (9th Cir. 1989). General findings are insufficient; rather, the ALJ must identify
18 what testimony is not credible and what evidence undermines the claimant's
19 complaints.

20 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), *as amended* (Apr. 9, 1996).

21 However, "[t]he standard isn't whether [the] court is convinced, but instead whether the
22 ALJ's rationale is clear enough that it has the power to convince." *Smartt v. Kijakazi*, 53 F.4th
23 489, 499 (9th Cir. 2022). An ALJ's reasoning as to subjective testimony "must be supported by
24 substantial evidence in the record as a whole." *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.
25 1995); *see Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008)
26 ("Accordingly, our next task is to determine whether the ALJ's adverse credibility finding of
27 Carmickle's testimony is supported by substantial evidence under the clear-and-convincing
28 standard.").

Here, the ALJ extensively discussed Plaintiff's subjective complaints when determining
Plaintiff's "paragraph B" criteria:

In understanding, remembering or applying information, the claimant has a
moderate limitation. The claimant has a high school education. The record shows
that the claimant filed an adult function report. He said that he has difficulty
staying on task. He said that he can handle his finances. He said he has difficulty
understanding, and following instructions. He said he can only pay attention for
three minutes (Exhibit B1E). In the objective medical evidence, it was noted,

1 during an examination, that the claimant had cooperative behavior. The claimant
2 had normal cognition. The claimant had normal orientation and organized thought
3 process. The claimant had anxious and depressed mood. The claimant had average
4 intelligence (Exhibit B7F/17).

5 In interacting with others, the claimant has a moderate limitation. The claimant
6 filed an adult function report indicating that he has difficulty staying on task, but
7 that he can also shop at the store (Exhibit B1E). The record shows several
8 notations that the claimant suffers from panic attacks (Exhibit B12F/3). A licensed
9 clinical social worker said that the claimant has no social life or job due to his
10 disability (Exhibit B12F/4). During an examination in December 2021, it was
11 noted that the claimant was having nightmares. It was noted that the claimant
12 reported panic attacks three times a day (Exhibit B12F/21). However, during a
13 February 2021 consultative examination, the claimant presented as casually and
14 neatly groomed with good eye contact (Exhibit B5F/3). Additionally, the claimant
15 testified that he sometimes stops at the grocery store on Fridays after medical
16 appointments, demonstrating that he does not require complete isolation from
17 others (Hearing Testimony).

18 With regard to concentrating, persisting or maintaining pace, the claimant has a
19 moderate limitation. The claimant filed an adult function report and reported that
20 he has difficulty staying on task. The claimant said that he can make meals and
21 complete some housework. He said that he can drive a car, an activity that requires
22 sustained concentration, and can go shopping at the store. He also said that he can
23 handle his finances. He said he has difficulty understanding, and following
24 instructions. He said he can only pay attention for three minutes (Exhibit B1E).
25 During an examination in July 2021, the claimant had cooperative behavior,
26 normal motor activity, normal orientation, and organized thought processes. The
27 claimant endorsed hallucinations, but denied suicidal and homicidal ideation. The
28 claimant was anxious. The claimant had normal insight and normal judgment. The
claimant had average intelligence (Exhibit B7F/5-6). At the hearing, he testified
that he drives to appointments and sometimes to the grocery store after
appointments (Hearing Testimony).

As for adapting or managing oneself, the claimant has experienced a moderate
limitation. The claimant filed an adult function report. He said that he has
difficulty staying on task. He said that his mental health symptoms inhibit his
ability to tend to his personal care. He said he can only pay attention for three
minutes (Exhibit B1E). During an examination, the claimant was well groomed.
The claimant reported having nightmares (Exhibit B3F/43). During another
examination, the claimant made good eye contact. The claimant had normal
speech. The claimant had depressed affect and anxious mood. The claimant had
constricted affect as well (Exhibit B5F/3). The claimant testified that he is able to
drive, grocery shop independently and fix microwave meals (Hearing Testimony).

(AR 18-19) (footnote omitted).

As to Plaintiff's subjective complaints, the ALJ concluded that Plaintiff's "medically
determinable impairments could reasonably be expected to cause some of the alleged symptoms."

1 (AR 21). Accordingly, because there is no affirmative evidence showing that Plaintiff was
2 malingering, the Court looks to the ALJ's decision for clear and convincing reasons, supported by
3 substantial evidence, for not giving full weight to Plaintiff's symptom testimony.

4 In formulating the RFC, the ALJ noted Plaintiff's subjective complaints but discounted
5 their degree of severity:

6 Therefore, the undersigned has determined that the claimant has severe
7 impairments, which cause functional limitations. However, the objective medical
8 evidence does not support the severity of the claimant's allegation that he is
9 incapable of working. The claimant filed an adult function report. He said that he
10 has difficulty staying on task. He said that his mental health symptoms inhibit his
11 ability to tend to his personal care. The claimant said that he can make meals and
12 complete some housework. He said that he can drive a car and can go shopping at
13 the store. He also said that he can handle his finances. He said he has difficulty
14 understanding, and following instructions. He said he can only pay attention for
15 three minutes (Exhibit B1E). When he filed for disability, the claimant alleged that
16 his anxiety disorder and panic attacks had limited his ability to work (Exhibit
17 B4E). The claimant completed another adult function report. He added that he has
18 difficulty with his memory and with his concentration (Exhibit B5E). The
19 claimant's sister completed two third-party function reports and stated that the
20 claimant is functionally limited (Exhibits B6E & B10E). The undersigned
21 considered these reports, but viewed them within the context of the entire record,
22 including the medical reports. While the undersigned accepts that the claimant is
23 functionally limited, these reported observations do not alone support a conclusion
24 that the claimant is incapable of working within the constraints of the established
25 residual functional capacity assessment. The claimant testified that he lives with
26 his brothers. He said that he is home alone during the day while his brothers work.
27 He said he drives himself to his doctor's appointments and also goes to the grocery
28 store. He said that he sometimes exhibits a panic attack at the grocery store and
leaves. The claimant testified he has a hard time leaving the house. He said that he
takes his medication. He said that he watches movies with his cousin. He said that
he will cut the grass and also handle his finances.

As noted above, the claimant has endorsed nightmares and panic attacks. The
claimant has endorsed hallucinations. The claimant also has had depressed and
anxious mood with constricted affect. In addition, the claimant has endorsed
improvement taking his medication with no side effects. The claimant has never
been hospitalized for his panic attacks. Even though he has alleged several times
he has difficulty leaving his home, the claimant goes to the doctor and to the
grocery store. The claimant is able drive his car, an activity that requires sustained
concentration. The claimant testified that he lives with his brothers. He said he
watches movies with his cousin. The claimant also makes meals and can handle
his finances. The objective medical evidence and the claimant's own admissions
support that he is capable of a modest level of activity in his home and outside of
his home. He testified that his medication makes him dizzy, but the objective
medical evidence noted that he was not having any medication side effects (See

1 exhibits B1F, B3F, B5F, B7F, B10F, and B12F, supra). In viewing the evidence in
2 the light most favorable to the claimant, the residual functional capacity has
3 addressed the claimant's condition by limiting him to simple tasks, simple
4 decisions, and limited contact with others. No single factor mentioned is
5 conclusive on the issue to be determined, but when viewed in combination, and in
6 conjunction with the medical history and examination findings, they suggest that
7 the claimant is not as limited as is alleged. For all the foregoing reasons, the
undersigned concludes that since the date of alleged onset of disability the
claimant has been able to perform a range of work consistent with the residual
functional capacity as assessed.

(AR 22-23).

8 The ALJ's robust discussion of Plaintiff's subjective complaints is contrary to Plaintiff's
9 assertion that the ALJ provided only a vague summary of the medical evidence that "offers no
10 findings or conclusion as to what evidence undermines which portions of Plaintiff's alleged
11 limitations." (ECF No. 13, p. 12) Such discussion shows that the ALJ considered Plaintiff's
12 subjective complaints but ultimately did not find them to cause disabling symptoms because of
13 evidence on record inconsistent with Plaintiff's allegations of disability, including examination
14 records noting Plaintiff's cooperative behavior, normal cognition, and normal orientation and
15 organized thought process. (AR 18) (citing AR 528, 516-17). *Carmickle*, 533 F.3d at 1161
16 ("Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective
17 testimony."). Moreover, the ALJ noted that although Plaintiff alleges that "he has difficulty
18 leaving his home, the claimant goes to the doctor and to the grocery store." (AR 23). Elsewhere in
19 the record, the ALJ also noted that the medical evidence did not substantiate Plaintiff's claimed
20 agoraphobia. (AR 20-21) (citing AR 516-17). Although the lack of supporting evidence cannot be
21 the sole basis to discount testimony, it can be a factor. *See Rollins v. Massanari*, 261 F.3d 853,
22 857 (9th Cir. 2001) ("While subjective pain testimony cannot be rejected on the sole ground that
23 it is not fully corroborated by objective medical evidence, the medical evidence is still a relevant
24 factor in determining the severity of the claimant's pain and its disabling effects.")

25 Further, the ALJ discounted Plaintiff's subjective complaints regarding his inability to
26 work based on Plaintiff's reported activities of driving, going to the doctor and grocery store,
27 watching movies with his cousin, managing his finances, and preparing his own meals. *See Burch*
28 *v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) ("[I]f a claimant engages in numerous daily
activities involving skills that could be transferred to the workplace, the ALJ may discredit the

1 claimant’s allegations upon making specific findings relating to those activities.”). Here, the
 2 ALJ’s interpretation was rational, and the ALJ’s decision must be upheld “where the evidence is
 3 susceptible to more than one rational interpretation.” *Id.* at 680-81 (9th Cir. 2005) (internal
 4 citations omitted).

5 Lastly, the ALJ also considered Plaintiff’s reported improvement with medication. *See*
 6 *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (noting that
 7 improvement is a factor that can be considered for purposes of whether a claimant is disabled).

8 Thus, the Court concludes that the ALJ provided legally sufficient reasons to reject
 9 Plaintiff’s subjective complaints.

10 C. Step Five

11 Plaintiff argues that the ALJ’s Step Five determination that Plaintiff could perform work
 12 as a hand packager (DOT 920.587-018), industrial cleaner (DOT 3381.687-018), and machine
 13 packer (DOT 920.685-078) conflicts with the ALJ’s RFC, which limited Plaintiff to simple,
 14 routine, and repetitive tasks. (ECF No. 13, p.10). According to Plaintiff, because these jobs
 15 require Level 2 reasoning, they are “not compatible with a limitation to non-complex work.” (*Id.*)
 16 Defendant argues that a limitation to “simple and routine tasks” is not incongruous to DOT
 17 occupations requiring Level 2 reasoning. (ECF No. 17, p. 16).

18 At step five, the ALJ must determine whether there are jobs available for the claimant in
 19 the national economy considering the claimant’s age, education, work experience, and residual
 20 functional capacity. *See* 20 C.F.R. § 416.920(a)(4)(v). Specifically, the burden shifts to the
 21 agency to prove that “the claimant can perform a significant number of other jobs in the national
 22 economy.” *Thomas v. Barnhart*, 278 F.3d 947, 955 (9th Cir. 2002). To meet this burden, the ALJ
 23 may consider testimony from a vocational expert regarding the jobs a claimant can perform
 24 despite their limitations. *Gutierrez v. Colvin*, 844 F.3d 804, 806-7 (9th Cir. 2016) (citing *Hill v.*
 25 *Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012)). “The *Dictionary of Occupational Titles*, a resource
 26 compiled by the Department of Labor that details the specific requirements for different
 27 occupations, guides [this] analysis.” *Gutierrez*, 844 F.3d at 807. The Ninth Circuit has held that
 28 “[w]hen there is an apparent conflict between the vocational expert’s testimony and the DOT—
 for example, expert testimony that a claimant can perform an occupation involving DOT

1 requirements that appear more than the claimant can handle—the ALJ is required to reconcile the
2 inconsistency.” *Zavalin v. Colvin*, 778 F.3d 842, 846 (9th Cir. 2015).

3 The Dictionary of Occupation Titles defines Level 2 reasoning as the ability to “[a]pply
4 commonsense understanding to carry out instructions furnished in written, oral, or diagrammatic
5 form. Deal with problems involving several concrete variables in or from standardized
6 situations.” DOT, App. C, 1991 WL 688702. In *Zavalin*, the Ninth Circuit noted that a limitation
7 to simple repetitive tasks appears to be consistent with Level 2 reasoning. 778 F.3d at 847 (citing
8 *Hackett v. Barnhart*, 395 F.3d 1168, 1176 (10th Cir. 2005)). Further, numerous district courts
9 have held that the ability to perform simple, routine, and repetitive tasks is equivalent to Level 2
10 reasoning. *See Gill v. Comm’r of Soc. Sec.*, No. 1:22-cv-01625-SAB, 2024 WL 1160500, at *14
11 (E.D. Cal. Mar. 18, 2024) (“[T]he Court finds no apparent conflict between Plaintiff’s ability to
12 understand, remember and carry out simple instructions and make simple work-related decisions
13 as found in his RFC and jobs requiring Level 2 reasoning.”); *Coleman v. Astrue*, No. CV 10-5641
14 JC, 2011 WL 781930, at *5 (C.D. Cal. Feb. 28, 2011) (“The Court recognizes, as defendant
15 points out, that the weight of prevailing authority precludes a finding of any inconsistency
16 between a reasoning level of two and a mere limitation to simple, repetitive tasks or unskilled
17 work.”); *Miller v. Kijakazi*, No. CV-20-1725-PHX-MTL, 2021 WL 5768811, at *8 (D. Ariz. Dec.
18 6, 2021) (“A limitation to work involving only ‘simple tasks,’ ‘simple, repetitive tasks,’ or
19 ‘simple, routine, repetitive work,’ is consistent with the ability to perform Level 2 Jobs.”) (citing
20 *Zavalin*, 778 F.3d at 847); *John B. v. Comm’r of Soc. Sec.*, No. C22-5910-BAT, 2023 WL
6845297, at * 4 (W.D. Wash. Oct. 17, 2023) (citing cases).

21 In arguing that remand is warranted, Plaintiff cites to *Rounds v. Comm’r of Soc. Sec.*, 807
22 F.3d 996, 1003-1004 (9th Cir. 2015), which found a conflict between an RFC limiting claimant to
23 “performing one- and two-step tasks, and the demands of Level Two reasoning[.]” *Id.* at 1003.
24 Here, however, Plaintiff’s RFC does not include a limitation to “one- and two-step tasks.” And
25 the Court has rejected Plaintiff’s argument that the ALJ erred in discounting Dr. DeBattista’s
26 opinion that Plaintiff is only able to “complete one or two step instructions” and “unable to
27 complete complex and detailed instructions.” Accordingly, the ALJ did not err at Step Five by
28 failing to resolved any conflict between the VE’s testimony, which was based on the ALJ’s

1 hypothetical questions relating an individual with Plaintiff's same RFC, and the DOT definition
2 of Level 2 reasoning.

3 **II. CONCLUSION AND ORDER**

4 Based on the above reasons, the decision of the Commissioner of Social Security is
5 affirmed. The Clerk of Court is directed to enter judgment in favor of the Commissioner of Social
6 Security and to close this case.

7 IT IS SO ORDERED.

8
9 Dated: **March 25, 2024**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE